



Republic of Mauritius

Employment  
Relations Tribunal

Annual Report  
*2012*



e-tribunal

Employment Relations Tribunal

# Annual Report *2012*

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# MISSION

To provide an efficient, modern, reliable and rapid means of arbitrating and settling disputes between workers or trade unions of workers and employers or trade unions of employers so that peace, social stability and economic development are maintained in the country.

# VISION

To be the expert tribunal for the settling of industrial disputes.

# NOTE FROM THE PRESIDENT

I have pleasure in forwarding the Annual Report for the year 2012, a year that has coincided with my 10<sup>th</sup> year in Arbitration of industrial disputes in particular.

A respected Chief Justice since our independence Sir Henry Garrioch foresaw as far back as 1976 in the case of Union of Labourers of the Sugar and Tea Industries versus Permanent Arbitration Tribunal:-

*“...the Tribunal is by its Constitution the main arbiter in the sphere of industrial relations. It is or is expected to become with time and experience, an expert body in that sphere and as such should be left, as far as possible, to determine what is required for the implementation of the purposes of the Act and the fulfillment of its objects.”*

I am pleased to state that this diction of Sir Henry Garrioch has stood the test of time and that the expertise of the Tribunal to deal with labour disputes is widely recognized among its stakeholders including institutions like the Pay Research Bureau.

Our Industrial Relations Act 1973 was repealed in 2009 and made room for a new drive towards collective bargaining and among its major features is the diligence we are expected to exercise in arbitrating disputes. I need to say that we are coping fairly well with the short time limits provided by law whilst at the same time allowing reasonable time facilities to parties, as allowed by law, to secure a settlement which can only foster good employment relations at the work place. We took note of a number of conciliations which the

Tribunal managed to secure between responsible and reasonable employers and representatives of trade unions or individual workers.

We have been wanting the new venue of the Employment Relations Tribunal to be a showcase of the principles governing the new Employment Relations Act, of not only equal pay for equal work, not only gender consideration, but also a decent place of work. With recent developments in the field of industrial relations and as the Government embarks further in modernizing and amending our employment laws, the role of the Tribunal can only be called upon to increase in the future. Indeed, with globalization and the unprecedented financial crisis which has hit the global economy and the yet persisting insecure state of the economy for instance in the Eurozone, the Mauritian economy is not immune from a downturn. In any crisis, those at the lower levels of the economy are the ones to suffer the most and workers are particularly at risk. The Government has the responsibility to take measures to ensure that the environment in the country remains favourable for investment whilst at the same time ensuring that this is not done at the expense of workers. Good employment laws and relations are more than ever crucial in this era of uncertainty and the role and responsibility of the Tribunal are sine qua non to ensure peace, social stability and economic development. As we approach 40 years since the setting up of the Tribunal, all efforts are being made, under my leadership, to develop the Tribunal into a more efficient, modern, reliable and rapid means of arbitrating and solving disputes between the relevant stakeholders so that every party is in a win win situation and that peace, social stability and economic development are maintained in the country.

I consider that the aim of the Tribunal should be to provide excellent service to its users and to be a model for the Civil Service. Since April 2010, the Tribunal has moved to new offices situated at Level 18, Newton Tower, Sir William Newton Street, Port Louis. The offices of the Tribunal are modern with new facilities such as a large conference room/library, hearing rooms equipped with digital hearing systems and an e-tribunal platform which provides numerous advantages to our various stakeholders and the public at

large. A large backlog of cases has been cleared and the modern seat of the Tribunal is not only a show case of the principles governing the Employment Relations Act but also strengthens the position of Mauritius as a modern and reliable hub in the region for arbitration matters. With the support of all stakeholders including Counsel and Solicitors, the Tribunal is meeting its goal of excellence in arbitration matters and continues delivering with celerity well-reasoned, balanced, adequate and innovative Awards which can contribute to foster good industrial relations and at the same time sustained economic growth for the Republic of Mauritius.

This Tribunal I believe is the first modern seat in Mauritius of a quasi-judicial body that meets international standard and this did not just happen. I am grateful to the Government in particular to the Attorney General, Hon. Yatin Varma for understanding our cause towards a modern and comfortable environment.



The year has also been marked by the full implementation of the electronic system. The e-tribunal is now a reality. The service is free. Our Awards are published on line. We do away with the famous Sitting Book that has kept us company on a daily basis and this thanks to the introduction of the electronic Case Management System. Statements of Case, Statements of Defence or documents by whatever names that need to be put before the Tribunal are accepted on-line, under the appropriate supervision. Tremendous time may

be gained between the lodging of a case and its final disposal for lawyers, the disputants, witnesses, the Tribunal and of course the public at large.

We are grateful to Counsel and solicitors assisting us in their research, their submission and understand that our best awards depend on being enlightened on issues of facts and law.

Our library contains a good collection of industrial relations law materials and we have the benefit of assistance of major law bookshops in the UK and France to help us updating it. Lawyers are welcome to make use of it.

Our staff capacity has been re-inforced and a legally trained Registrar has been posted at the Tribunal.

At the level of the Bench, we have had the honour of having in our midst Mr. Shameer Janhangeer, a former Magistrate and Temporary Principal State Counsel.

The increasing number of women joining the labour force warrants our Bench to have representatives of the female gender. The year has also been marked by the nomination of three ladies as members of the Tribunal representing the employers and employees. At the same time, I wish to thank our previous members for their dedication and contribution to the Tribunal.

My gratitude also goes to the dedicated staff and to the 1st Vice President, Mr. Indiren Sivaramen for his contribution in all our achievements.

Rashid Hossen  
President



# COMPOSITION OF THE TRIBUNAL

## PRESIDENT

**Abdool Rashid HOSSEN, LLB** (Hons) (Buckingham), Barrister (Middle Temple) was called to the Bar in 1981. He joined the Civil Service as Crown Counsel at the Attorney-General's Office in 1983. He was appointed District Magistrate in the Judicial Department in 1984 and promoted Senior State Counsel at the Attorney General's Office in 1991. He has been Chairman of the Prison Board of Visitors in 1990 and 1991 and was promoted Senior District Magistrate in 1993. He was the Returning Officer for the 1991 Legislative Assembly Elections. Mr. Hossen was a Magistrate of the Intermediate Court during the period 1991 to 2002. In 2002, he was appointed Vice President of the Permanent Arbitration Tribunal. In 2003, he was appointed President of the Civil Service Arbitration Tribunal. He became a Member of the Commonwealth Magistrate and Judge Association in 2004 and was appointed President of the Permanent Arbitration Tribunal in 2008. He is since 2009 a Member of the Approved List of Arbitrators of the Mauritius Chamber of Commerce & Industry Arbitration Court. With the establishment of the Employment Relations Tribunal in 2009, Mr Hossen was appointed President. He is an Associate of the Chartered Institute of Arbitrator (UK) since 2010. In 2012, he was appointed Chairman of the Fact Finding Committee set up by the Government of Mauritius to inquire into and recommend on (Security Access to Prisons). As from 2012, he is also a Member of the International Council for Commercial Arbitration.



Mr Hossen has read Private International Law (Hague Academy of International Law) (Holland) (1980). He followed a Course on American Legal System in New York and Washington D.C. Sponsored by United States Information Service (USA) (1987). He attended an Advanced Course on Technical Aspects of Legal Drafting at the International School of Bordeaux (France) (1992). He did a study tour on Judicial Administrative Tribunals (Italy) (1996). He attended UNDP's Seminar on the Australian Legal System (Australia) (2000). He attended a Conference organized by the Commission for Conciliation, Mediation and Arbitration (CCMA) in collaboration with the International Labour Organization (ILO) on Regional Cooperation regarding Labour Dispute Resolution and Prevention (South Africa) (2005). He attended a seminar on Arbitration Chaired by Ben Beaumont Arbitrator from Hong Kong organized by the Mauritius Chamber of Commerce (Mauritius) (2010). He participated at the International Council for Commercial Arbitration Congress on "Arbitration & Other forms of Dispute Resolution" (Brazil) (2010). He attended the International Council for Commercial Arbitration Conference on "Arbitration and the next 50 years" (Switzerland) (2011). He participated at the International Conference of the Chartered Institute of Arbitrators (UK), European Branch on "Arbitration in Europe" (Spain) (2012). He also participated at the Basel, Swiss Arbitration Conference (Switzerland) (2013).

## VICE-PRESIDENTS

**Indiren SIVARAMEN**, LLB (Hons), MBA (Finance) (University of Leicester), Barrister was called to the Bar in 1996. He practised at the Bar from 1996 to 1999. He was also acting as Legal Consultant for International Financial Services Ltd from 1998 to 1999. He joined the Civil Service in 1999 as Temporary District Magistrate and was appointed District Magistrate in 2000. In 2003, Mr Sivaramen was appointed



Senior District Magistrate. He was part-time lecturer at the University of Mauritius from 2005 to 2007. He was the Returning Officer in Constituency No. 20 for the National Assembly Elections in 2005. After a brief span as Legal Counsel for Barclays Bank PLC, Mauritius Branch and Barclays Bank (Seychelles) Ltd in 2006, he occupied the post of Vice-Chairperson of the Assessment Review Committee from 2006 to 2010. In February 2010, he was appointed as Vice-President of the Employment Relations Tribunal.

**Shameer JANHANGEER**, LLB (Hons) (London), MBA (Business Finance), Barrister (Lincoln's Inn) was called to the Bar in the U.K. in 1999. After shortly practicing at the Bar, he joined the service as State Counsel at the Attorney-General's Office in 2002. In 2004, he joined the Judiciary as Acting District Magistrate and was later appointed as same. He was Deputy Returning Officer for Constituency No. 6 at the National Assembly Elections in 2005. He chaired a Board of Assessment in 2007 and upon returning to the Attorney-General's Office, he was appointed Senior State Counsel in 2007. In 2009, he was appointed Temporary Principal State Counsel at the Attorney-General's Office/Office of the Director of Public Prosecutions. In June 2011, Mr. S. Janhangeer joined and was appointed as Vice-President of the Employment Relations Tribunal.



## **MEMBERS OF THE TRIBUNAL (as from 22 December 2012)**

### **Representatives of Workers**

1. Mr Soonarain Ramana
2. Mr Ramprakash Ramkissen
3. Mr Raffick Hossenbaccus
4. Mrs Esther Hanoomanjee
5. Mr Vijay Kumar Mohit

### **Representatives of Employers**

1. Mr Rabin Gungoo
2. Mr Denis Labat
3. Mr Desire Yves Albert Luckey
4. Mrs Rajesvari Narasingam Ramdoo
5. Mrs Annsha Taukoordass

### **Independent Members**

1. Mr Triboohun Raj Gunnoo
2. Mr Khalad Oochotoya
3. Mr Georges Karl Louis

**STAFF LIST**

1. Mr DABYCHARUN Taij Avinash Registrar
2. Mrs. BUXOO Farozia Higher Executive Officer
3. Mrs. JALIM Rookhsana Bibi Financial Operations Officer /  
Senior Financial Operations Officer
4. Mrs TANG SAK YUK Françoise Senior Shorthand Writer
5. Mrs SOHAWON Rassool Bibi Shorthand Writer
6. Mrs WAN CHUN WAH Chong How Shorthand Writer
7. Mrs FONG WENG Marie-Laure Confidential Secretary
8. Mrs TOOFANY Bibi Ansoo Confidential Secretary
9. Mrs DOSIEAH Deeneshwaree Confidential Secretary
10. Mrs LUCHMUN Dhanwantee General Services Officer
11. Mrs LABONNE Mary Joyce General Services Officer
12. Mrs PATANSINGH Jayshree General Services Officer
13. Mr HAIRSOO Amez General Services Officer
14. Miss DUSOYE Ashvina Kaminee Temporary General Services Officer
15. Mrs CHOCALINGON Malini Office Care Attendant /  
Senior Office Care Attendant
16. Mr. BUNDHOO Nishad Office Care Attendant /  
Senior Office Care Attendant
17. Mr RUSMAULLY Pervez Driver

# SUMMARY OF CASES

## NOTE

This summary is provided to assist in understanding the Tribunal's decision. It does not form part of the reasons for that decision. The full opinion of the Tribunal is the only authoritative document. Awards are public documents and the awards delivered in 2012 are available at: <http://ert.gov.mu/English/Awards/pages/Awards-2012.aspx>

## **ERT/RN 288/11 - Union of Bus Industry Workers and Triolet Bus Service Ltd**

The two parties jointly referred the dispute for voluntary arbitration to the Tribunal under Section 63 of the Employment Relations Act 2008 (ERA 2008). The point of dispute was whether Management of Triolet Bus Service Ltd should grant every worker who is employed on monthly basis as from 05th May 2008 "Annual and Sick Leave" after completed two years of service on monthly basis without 230 days attendance at work as qualification for entitlement for the said leave as per the Permanent Arbitration Tribunal (PAT) Award RN 315 of 1994.

The Tribunal considered the effect of an Award delivered by the PAT and that of a subsequent relevant Remuneration Order which came into force in the year 2008. After analysing the law and evidence on record including the problem of absenteeism in that sector, the Tribunal came to the conclusion that the qualification in terms of the number of days a worker must have attended work could not be viewed as a major impediment. The Tribunal thus declined to award as per the terms of dispute. (G. N No. 61 of 2012)

- ERT/RN 84/10 - Mr Jean Christian Agathe and Roman Catholic Education Authority**
- ERT/RN 87/10 - Miss Marie Lindsay Castel and Roman Catholic Education Authority**
- ERT/RN 88/10 - Mr Joseph Allan Ladd Emilien and Roman Catholic Education Authority**
- ERT/RN 89/10 - Mr Louis Philippe Francois and Roman Catholic Education Authority**
- ERT/RN 90/10 - Mr Gaetan Jhabeemissar and Roman Catholic Education Authority**
- ERT/RN 91/10 - Mrs Jacqueline Prosper and Roman Catholic Education Authority**

All the six disputes were consolidated. The common points of disputes were: (1) whether the Roman Catholic Education Authority (RCEA) should reinstate the above named in their rightful occupation of which they have been excluded since they were elected as ordinary Members of the Rodrigues Regional Assembly in October 2002 and (2) whether the Disputants who are employed as teachers should be entitled to claims addressed to the RCEA for:- (i) loss of salary; (ii) loss of pension right; (iii) loss of years of service and (iv) loss of right to promotion.

The Tribunal in its Award delivered on the 31st of January 2012 found that in the case of Mr François, the first dispute had no more its “raison d’être” and was thus set aside. The second dispute was also set aside as the Disputant had agreed to the terms and conditions of his leave without pay.

Mrs Prosper was no more insisting to be reinstated and her dispute was set aside. Mr Agathe was still in office as a Commissioner of the Rodrigues Regional Assembly and bearing in mind Section 23(4) of the Rodrigues Regional Assembly Act and the agreement of Mr Agathe to the conditions laid down by Respondent for participation at the Rodrigues Regional Assembly, his disputes under both limbs were set aside.

In the case of Mr Emilien, the Tribunal found that the latter was seeking compensation should he be reinstated retroactively and hypothetically. The Tribunal thus and for reasons given for the other disputants has set aside his dispute also.

In the case of Ms Castel and Mr Jhabeemissar, the Tribunal found that the first dispute no longer had its “raison d’être” and their two disputes were set aside. (G. N No. 185 of 2012)

**RN 36/11 - Mr Deoraz Gooriah and Mauritius Revenue Authority**

**RN 37/11 - Mrs Maneshwaree Mavintah Ramdeny and Mauritius Revenue Authority**

The two cases were consolidated. The terms of reference were fairly similar for each Disputant (except for the salaries mentioned) and read as follows: (i) whether, having regard to the disputant’s basic salary as at 01st of July 2006, his gross salary as at June 2008 and the Conversion Tables, the Respondent has acted fairly by offering to the disputant, a salary of Rs 51 250, with effect from 01st July 2008, effective date of implementation of the revised salaries, together with a non-pensionable allowance of Rs 12 338 – in lieu of an increase in salary as per the Conversion Tables; (ii) whether the Respondent has, in its review of salaries and conditions, acted in a discriminatory manner, with regard to the disputant, inasmuch as on the basis of the conversion exercise carried out by the Respondent, the salary which ought to have been awarded to the disputant, having regard to the conversion, ought to have been above Rs 64 000, and in any case not less than Rs 64 000 with effect from 01st July 2008; (iii) whether, in the circumstances, having regard to Respondent’s review of salary and conditions applicable to its staff, Respondent was right to have offered to the disputant a revised pensionable salary of Rs 51 250 together with a non-pensionable allowance of Rs 12 328; (iv) whether the disputant should, with effect from 01st July 2008, have his salary of Rs 50 024 drawn as at 30 June 2008 adjusted to include any increment due on 01st July 2008, and then converted to the corresponding point in the Conversion Tables, and thereupon maintain that converted salary as his personal pensionable salary.



In the course of proceedings, parties reached an agreement and having moved for an Award in terms of the agreement, the Tribunal awarded accordingly. (G. N No. 634 of 2012)

**RN 06/12 - Union of Bus Industry Workers and Triolet Bus Service Ltd**

The Union of Bus Industry Workers applied to the Tribunal under Section 75 of the ERA 2008 for an interpretation of the Award delivered in RN 288/11 as to “whether the Award should be interpreted to mean that all monthly paid workers as from 05th May 2008 should work at least 195 days to qualify for Sick and Local Leaves for the forthcoming year”.

The Tribunal declared that this is not the proper interpretation and that a requirement of 230 days “attendance at work” in any continuous period of twelve months for entitlement to (both) annual and sick leave in the following period of twelve months has been maintained for the relevant workers. (G. N No. 633 of 2012)

**ERT/RN 15/12 - Union of Employees of Central Water Authority and Central Water Authority**

This is an application made under Section 51 of the ERA 2008. Throughout the proceedings, the representative of the Respondent maintained that the Management was willing to draw up and sign a Procedure Agreement with the Union and the Tribunal felt that an opportunity should be given to the Employer to exercise his good faith.

The Tribunal invited both Management and the Union to unlock rigidity and make room for genuine negotiations for the betterment of the conditions of work of the employees and the smooth running of the department. No Order was thus issued and the application was set aside. (G. N No. 826 of 2012)

**ERT/RN 16/12 - Central Water Authority Meter Readers Union and Central Water Authority**

The Central Water Authority Meter Readers Union made an application to the Tribunal for the “implementation of a procedural agreement” in accordance with section 51 of the ERA 2008. After having heard the parties, the Tribunal found that the Respondent has not refused to draw up and sign a procedure agreement. The Tribunal also urged the parties to reconcile their differences at the earliest to enter into a procedural agreement in a spirit of harmonious employment relations.

The application was accordingly set aside. (G. N No. 875 of 2012)

**ERT/RN 13/12 - Union of Customs and Excise Officers and Mauritius Revenue Authority, I.P.O Mauritius Revenue Authority Staff Association**

The Union of Customs and Excise Officers made an application to the Tribunal for an order to direct the Mauritius Revenue Authority to recognize the Union as a bargaining agent for the grades of Team Leader, Technical Officer, Customs Officer I and Customs Officer II in the Customs Department.

The Tribunal did not accede to the said application in light of section 37 of the ERA 2008 and in view of the promotion of good employment relations between the parties concerned. The application was set aside.

**RN 299/11 - Mr Krishnaduth Ramkalam and Airports of Mauritius Co Ltd**

**RN 300/11 - Mr Dhanraj Ramtohul and Airports of Mauritius Co Ltd**

**RN 301/11 - Mr Devendranathsingh Baulah and Airports of Mauritius Co Ltd**

The three cases were consolidated with the agreement of all parties. The terms of reference in the cases were similar and read as follows: “Whether following the change in my hours of work from “8.45 hrs to 16.00 hours” to “8.30 to 16.30 hours”, I, Mr [...], an ex-DCA employee, should have been granted a compensation equivalent to two increments as per paragraph 17.2.1 (iii) of the Airports of Mauritius Co. Ltd Terms and Conditions of Employment (January 2009), or otherwise.”

After having heard the evidence and submissions of Counsel, the Tribunal awarded that following the change in the hours of work of the Disputants from “08 45 hrs to 16 00 hrs”, the Disputants should be granted a compensation equivalent to two increments as per paragraph 17.2.1 (iii) of the Respondent’s Terms and Conditions of Employment (January 2009). (G. N No. 1057 of 2012)

**ERT/RN 293/11 - Mr Vimal Moneeram and Mauritius Telecom Ltd**  
**ERT/RN 294/11 - Mr Remy Celestin and Mauritius Telecom Ltd**

The above two cases were consolidated with the consent of parties. The two matters were referred to the Tribunal for arbitration on the following terms of reference: - “Whether the Disputants should be employed “on establishment”, i.e. on a permanent basis and/ or whether the employment of the Disputants amount to be “on establishment”.”

After having considered the evidence on record, written submissions of Counsel and relevant laws the Tribunal found that it has never been expressly stated that the disputants would be employed on the permanent and pensionable establishment of Respondent. However, the Tribunal also referred to principles and best practices of good employment relations to urge Respondent on the particular facts of the cases to consider the employment of the disputants on a permanent and pensionable basis.

The Tribunal also found that there was no mutual intention between the parties for the contract of employment to be of an indeterminate duration. The disputes in both cases were set aside. (G. N No. 1218 of 2012)

**ERT/RN 18/12 - Social Welfare and Community Centres Employees Union (SWCCEU) and Sugar Industry Labour Welfare Fund (SILWF)**

The SWCCEU and the SILWF jointly referred the labour dispute for voluntary arbitration pursuant to section 63 of the ERA 2008. The terms of the labour dispute were as follows: (i) “whether an employee reckoning at least 25 years continuous service in the same post should be paid an additional increment as per PRB Report 2003; (ii) whether those persons employed by the Committee of Social Welfare and Community Centres and taken over by SILWF as from 13th August 1987 with continuity of service should be eligible to that additional increment for reckoning at least 25 years continuous service in the same post”.

In its Award, the Tribunal drew the attention of Counsel that it cannot pronounce on whether each individual worker who joined the SILWF in August 1987 from the Social Welfare Centre would be eligible for the additional increment recommended in the PRB Report 2003. Each worker would have his own particular circumstances on whether he would be eligible or not for the additional increment and any worker who firmly believes he meets this entitlement would be advised to report a case on his own.

The Tribunal awarded that those workers who were formerly employed by the Committee of Social Welfare and Community Centres and are now integrated with the SILWF as from 13th August 1987, who satisfy the conditions of eligibility set out in paragraph 1.33 (v) of the PRB Report 2003 and who have opted to accept the revised terms and conditions of service as set out in the aforesaid Report should be granted an additional increment with effect as from 01st July 2003. (G. N. No. 1289 of 2012)

**ERT/RN 305/11 - Miss Yean Lam Kin Cheung and Mauritius Institute of Training & Development**

The Terms of Reference of the present labour dispute read as follows: - “Reinstate to same post as Training Officer forthwith on same terms and conditions.” The disputant has averred that her employment has been unilaterally terminated consequential to verbal, psychological and sexual harassment at work. After analysing the evidence on record and the submissions of Counsel, the Tribunal concluded that the contract was a contract of a determinate nature and that each contract of the disputant had been expressly renewed without any “tacite reconduction.”

The Tribunal thus awarded that nothing in law imposed an obligation upon the Respondent to extend the contract of the Disputant and this being so, the issue of reinstatement did not arise. The dispute was accordingly set aside. (G. N. No. 1373 of 2012)

- ERT/RN 19/12 - Mr Deenesh Patpur and Private Secondary Schools Authority**
- ERT/RN 20/12 - Mr Anant Kumar Udhin and Private Secondary Schools Authority**
- ERT/RN 21/12 - Mr Soorsh Ramphul and Private Secondary Schools Authority**
- ERT/RN 22/12 - Mr Om Krishna Ramsahye and Private Secondary Schools Authority**
- ERT/RN 26/12 - Mr Vivekanandsing Roopun and Private Secondary Schools Authority**
- ERT/RN 28/12 - Mrs Bibi Aissa Sayed-Hossen and Private Secondary Schools Authority**

The six cases were referred to the Tribunal for arbitration in terms of section 69 (7) of the ERA 2008 and the terms of reference which were the same in all the cases read as follows: - “Whether the monthly ad-hoc allowance equivalent to the three increments on the relevant salary scale which was paid to Private Secondary Schools’ Authority Supervisors from May 2002 to June 2008 for additional duties and due to shortage of staff, should be re-instated with effect from 01st July 2008, or otherwise.”

Counsel for the Respondent took an objection in law to the effect that the matter was not a labour dispute. The Tribunal has heard arguments from both Counsel on the said objection. The Tribunal found, inter alia, that the Disputants were not claiming that they should be granted an ad-hoc allowance as from 1 July 2008 as per the PRB Report 2008. Whilst the Disputants had signed options to be governed by the PRB recommendations, they could not at the same time declare a dispute in relation to the lapsing or “reinstatement” of an ad-hoc allowance which has lapsed. The objection in law was upheld and the disputes were set aside. (G. N No. 1476 of 2012)

### **ERT/RN 05/12 - Mr Jadoonundun Charitar and Central Electricity Board**

The case was referred to the Tribunal pursuant to section 69 (7) of the ERA 2008 and the terms of reference of the dispute, were as follows: (i) Whether the Central Electricity Board should grant disputant leave and passage benefits under the Tour of Service Scheme for the period November 2005 to 19 October 2008; (ii) Whether the Central Electricity Board should refund him the full cost, Rs 9000 instead of only 50% i.e. Rs 4500 of the fees paid in July 2009 to attend a seminar organized by the ACCA Mauritius Branch in July 2009.

The Tribunal found that the right to the Leave and Passage Benefits is subject to a discretion which has been vested with the Board. On the facts of the present matter, the Tribunal found that the CEB had not made an injudicious exercise of its power in not granting the Disputant Leave and Passage Benefits under the Tour Of Service Scheme for the period November 2005 to 19 October 2008. As regards the second dispute, the Tribunal, in referring to the Appanna Report, found that the refund of 50% demonstrates the good faith of the Respondent vis-à-vis the Disputant. The Tribunal did not award for a refund of the full cost of the fees. Both items of the dispute were therefore set aside. (G. N No. 1750 of 2012)

**ERT/RN 35/12 - Mr Ugadiran Mooneepen and the Mauritius Institute of Training and Development**

The Terms of Reference referred by the Commission for Conciliation and Mediation in the present labour dispute read as follows: “Whether the Mauritius Institute of Training & Development should have proceeded with the Interview and Selection for the post of Officer-in-Charge N.T.C Foundation Course during my approved permission to leave the country from 25 November 2011 to 15 December 2011.”

The Tribunal commented on the manner the Terms of Reference had been drafted whereby a declaratory Award was being sought for. However, the Disputant had proposed in his Statement of Case that he would be prepared to accept an amicable settlement if one increment on his basic salary was offered to him as from 1 January 2012 until his retirement.

The Tribunal found that the Disputant had been deprived of the opportunity of participating in the interview exercise on the same basis as others who were qualified and who did so. In the light of all the evidence before it, the Tribunal awarded that the Respondent should grant the Disputant an increment on his basic salary on a personal basis as from 1 January 2012 until his retirement. (G. N. 1964 of 2012)

**ERT/RN 31/12 - Mrs Pooniawtee Devi Bhurtun and The State (Ministry of Health & Quality of Life)**

**ERT/RN 32/12 - Mrs Uma Devi Moolchand and The State (Ministry of Health & Quality of Life)**

The two cases were referred to the Tribunal pursuant to section 69 (7) of the ERA 2008 by the Commission for Conciliation and Mediation and the terms of reference of the two disputes (which were consolidated before the Tribunal) read as follows: “Whether the implementation of Roster C as from 27 June 2011 for the grade of Hospital Care Attendant at SSRN Hospital should be stopped and the previous Roster prior to 27 June 2011 be restored.”

After considering the evidence in detail, the Tribunal made a few observations in relation to the meal times of the Disputants, the long shifts running from 7 a.m. to 6 p.m. as well as the new roster having less shifts which enables the Hospital Care Attendants to have more days off per week and per year. The Tribunal concluded that it could not award that the implementation of Roster C should be stopped and for the previous Roster to be restored. The dispute was thus set aside. (G.N. No. 1963 of 2012)

**ERT/RN 65/12 - Mr Ashok Seesaghur & Others and The President, Rodrigues Commission for Conciliation and Mediation**

The Appellants appealed against a decision of the President of the Rodrigues Commission for Conciliation and Mediation (the “RCCM”) not to proceed any further with a dispute reported before it by the Appellants inasmuch as the labour dispute should not have been submitted to the Commission according to section 67 (b) of the ERA 2008. Counsel for the Respondent raised a preliminary objection in law to the effect that the procedure adopted by the Applicants was incorrect and that the case ought to be set aside.

The Tribunal concluded, having regard to its function as specified under the ERA 2008, that there is no specific right of appeal provided under the Act in relation to a decision taken under section 67 (b) of the Act, and that the Tribunal, in view of its jurisdiction, is not the proper forum to challenge the decision in lite of the RCCM. The preliminary objection was therefore upheld and the appeal was set aside. (G.N No. 2047 of 2012)

**ERT/RN 54/12 - Chemical Manufacturing and Connected Trades Employees Union and Compagnie Mauricienne de Commerce Ltee**



The two parties jointly referred the disputes to the Tribunal for voluntary arbitration under section 63 of the ERA 2008. The points in dispute read as follows: (1) "That all employees forming part under the bargaining unit of the Union should benefit from all benefits of Collective interest agreed between the employees represented by the above Union and the Company" and (2) "That all employees forming part under the bargaining unit of the Union without excluding any new recruits should benefit from one Saturday off after having worked for the precedent Saturday which results from one Saturday at work and one Saturday off and thereon repeatedly."

(1) The point in dispute No.1 was set aside since the terms of reference had been wrongly drafted with reference to the workers (instead of the union) entering into the agreement on "benefits of collective interest".

(2) In relation to point in dispute no 2, the Tribunal considered all the evidence on record and found that it was not warranted for the company to unilaterally change terms and conditions of work albeit for new recruits in the bargaining unit of the trade union. The Tribunal stressed on the importance of uniformity of terms and conditions of employment for workers in the same bargaining unit the more so when there is no concrete evidence as to serious and real prejudice to the viability of the employer. (G.N No. 2080 of 2012)

### **ERT/RN 66/12 - Sugar Industry Labour Welfare Fund and Social Welfare and Community Centres Employees Union**

The Tribunal delivered an Award in a labour dispute referred voluntarily by the Applicant and Respondent under section 63 of the ERA 2008. The Sugar Industry Labour Welfare Fund sought an interpretation in relation to two paragraphs of the aforesaid Award. (G.N No. 1289 of 2012).

The Tribunal interpreted same under Section 75 of the ERA 2008 as follows: (1) to determine whether each worker satisfies the conditions of eligibility set out under the

relevant paragraph of the PRB Report 2003 is an exercise of its own and will depend on the facts of each and every case and (2) the Tribunal confirmed that a worker who fairly believes he meets the said entitlement would have to report a case on his own. (G.N No. 2081 of 2012)

### **ERT/RN 67/12 - Scomat Ltee and General Workshop Workers Union**

The Applicant made an application to the Tribunal under section 62(2) of the ERA 2008 for a declaration in relation to the interpretation of a provision in a Collective Agreement entered into by the two parties. The provision read as follows: "A special allowance of Rs 500 per day of intervention shall be given to all workers who are called upon to work at any dumping sites where intervention is done on machines within the dumping area."

The Tribunal examined all the evidence adduced before it paying particular attention to words used such as "dumping sites" and "dumping area". The Tribunal then declared that the relevant provision of the Collective Agreement cannot be interpreted to include workers who are required to intervene (only) on machines such as generators which are not located within the dumping area. (G. N No. 2129 of 2012)

### **ERT/RN 75/12 - Air Mauritius Technical Services Staff Union and Air Mauritius Ltd**

This was an application under section 38 (1) of the ERA 2008 (ERA) for an Order directing the Respondent to recognize the Applicant as the sole bargaining agent in relation to Support Engineers, Workshop Controllers and Certifying Workshop Technicians at the Respondent. There was no dispute concerning the representativeness of the Applicant in relation to these grades of workers and the Applicant had the support of 42 out of 44 Support Engineers, 4 out of 4 Workshop Controllers and 13 out of 13 Certifying Workshop Technicians.

The first issue the Tribunal examined was whether workers of these grades can constitute a bargaining unit under the ERA. Sections 2, 29 and 30 (a) of the ERA and section 102 of the Code of Practice (Fourth Schedule to the ERA) were referred to. The Tribunal found that the workers in these grades have a substantial degree of common interest and can constitute a bargaining unit. Also no trade union was then representing the interests of those workers.

The Tribunal ordered that the Applicant be granted recognition by the Respondent and that the parties should meet at such time and on such occasions, as the circumstances may reasonably require, for the purposes of collective bargaining.

### **ERT/RN 12/12 - Mr Ng Cheong Jose Li Yun Fong and The Bank of Mauritius**

This was an arbitration referred by the Commission for Conciliation and Mediation and the terms of reference were as follows: (i) Whether following an organization restructure exercise carried out by the Management of the Bank of Mauritius during the year 2007/2008, the latter was warranted to demote me from the grade of "Assistant Director" IT Department to a lower grade of "Chief IT" with a lower salary assigned to the Assistant Director's grade, (ii) Whether the Management of the Bank of Mauritius should withhold my increment for the year ending 30 July 2009, following the salary review exercise carried out in September 2009 and (iii) Whether the monthly responsibility allowance (Rs 2000) paid to me from February 2000 to May 2001 should have continually been paid to me after my nomination as Assistant Director on 15 May 2001 while I was still performing the duties of the Director who retired from the Bank.

After examining all the evidence adduced before it, the Tribunal found that the Disputant had not been subject to demotion given that he chose to apply for the post of Chief IT. The Tribunal was not satisfied that the post of Chief IT was lower than the post of Assistant Director.

As regards the second dispute, the Tribunal found that the procedures in the Terms and Conditions of the Bank regarding suppression of increments had not been followed

by the Bank. The Tribunal awarded that Disputant be paid the increment due to him in 2009.

Under the third dispute, the Tribunal noted that Disputant has now been appointed Assistant Director (instead of Manager) and concluded that the payment of a Responsibility Allowance of Rs 2000 cannot be continually paid to Disputant. (G.N No. 2394 of 2012)

**ERT/RN 29/12 - Miss Vasantee Kallychurn and The State (Ministry of Health & Quality of Life)**

**ERT/RN 30/12 - Mr Swaley Mamode Jandoo and The State (Ministry of Health & Quality of life)**

The two disputes were referred to the Tribunal pursuant to section 69 (7) of the ERA 2008 by the Commission for Conciliation and Mediation and the terms of reference read as follows: - "Whether the implementation of Roster C as from 27 June 2011 for the grade of Hospital Care Attendant at J. Nehru Hospital should be stopped and the previous Roster prior to 27 June 2011 be restored."

After hearing the parties, the Tribunal, whilst referring to the Pay Research Bureau Report 2008 and to the essential nature of a 24 hours service at a hospital, concluded that it could not award that the implementation of Roster C for the grade of Hospital Care Attendants at J. Nehru Hospital should be stopped and the previous Roster prior to 27 June 2011 be restored. The Tribunal however called upon the Hospital Care Attendants and the hospital administration/management to have an entente to ensure the smooth implementation of the new roster at the hospital and for the promotion of good and harmonious employment relations at the workplace. The dispute was therefore set aside. (G. N No. 2393 of 2012)

**ERT/RN 55/12 - Mr Dayanund Koobrawa and Sugar Investment Trust**

The dispute was referred to the Tribunal under section 69 (7) of the ERA and the terms of reference read as follows: “Whether Mr Dayanand KOOBRAWA should be entitled to a salary of Rs 48, 000 to be at par with other Team-Leaders in the new grading of SIT-8, effective as from October 2011.”

Several witnesses were heard and the CEO Mr Bholah deposed to the effect that the salary of each employees was performance-related based on merit, workload, commitment and loyalty. Mr Bholah also deposed to the fact that he was not very much satisfied with the performance of the Disputant and that every time he had to talk to latter to remind him how he had to deliver to his job expectations but added that recently he has seen some improvement in the work of the Disputant.

After examining all the evidence adduced before it, the Tribunal observed that even if the Tribunal was to award in favour of the Disputant, the latter would not be at par with other Team Leaders except for one who was however already prior to October 2011 earning a higher salary than Disputant.

In the absence of evidence that Disputant ought to be awarded a salary of Rs 48,000 which constituted a salary increase of some 34% for him within the salary scale ranging from Rs 37,500 to Rs 80,000, the Tribunal concluded that it could not award that Disputant ought to be awarded such a salary. The dispute was set aside though the Tribunal was confident that an acceptable solution to both parties could still be reached in the light of observations made so that both parties would benefit from a win-win situation. (GN No.32 of 2013)

# STATISTICS

This annual report is published in accordance with Section 86(2)(d) of the Employment Relations Act 2008.

During the year 2012:

- ◆ The number of disputes lodged before the Tribunal was 112 out of which 43 cases were referred to the Tribunal by the Commission for Conciliation and Mediation.
- ◆ The number of cases disposed of summarily (through conciliation and agreements between parties) was 80.
- ◆ There were 18 Awards and 2 Orders delivered and the Tribunal had to deliver 7 Rulings.
- ◆ The Tribunal has disposed of a total of 104 cases/disputes during the period January to December 2012.

As at 31st December 2012, there were 231 cases/disputes pending before the Tribunal. These include 201 'connected' cases involving customs officers and the Mauritius Revenue Authority. One test case (Mr Vicky Damree and Mauritius Revenue Authority) has already been heard and disposed of by the Tribunal (G.N No. 1835 of 2011) but the disputant has sought a judicial review of the Award before the Supreme Court. The parties in the other cases are thus waiting for the outcome of the Supreme Court case before taking a stand in the pending cases.

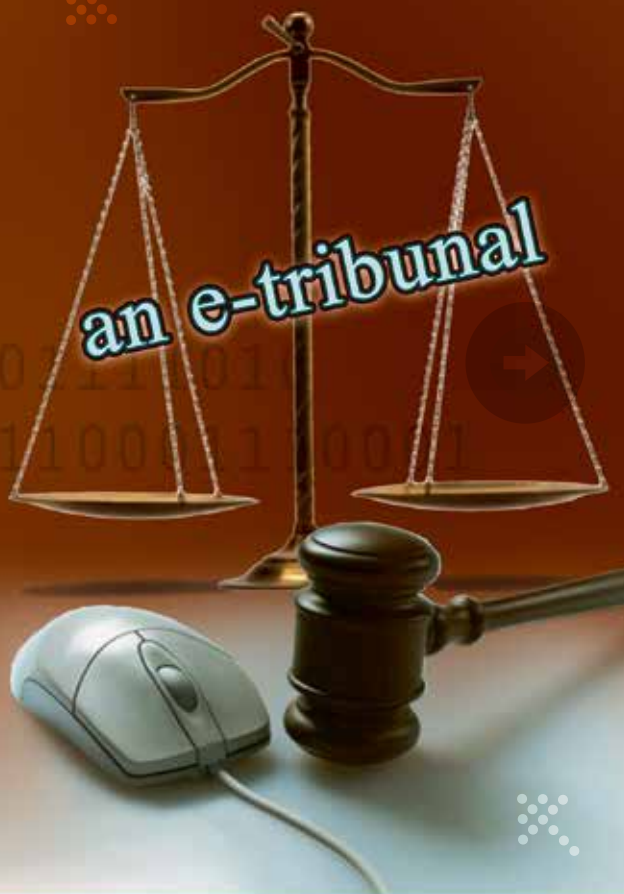
# LAUNCHING OF THE E-TRIBUNAL







## Employment Relations Tribunal



### WHAT IS AN E-TRIBUNAL?

- An e-tribunal is a modern Tribunal where electronic means of communication is allowed between parties to a case and the Tribunal.
- Parties can exchange pleadings by e-mail and the physical attendance of parties is not required until a matter is fully in shape for hearing.
- Counsel can e-mail copies of relevant case law that they intend to use or written submissions. Requests for minutes of proceedings, summoning of witnesses or postponements can also be made by e-mail.
- Awards of the Tribunal are available online on the website of the Tribunal (<http://ert.gov.mu>)



### WHO CAN HAVE ACCESS?

- The service is free, and open to anyone who is a party to a labour dispute which has been or is being referred to the Tribunal.
- A user will be able to use the system once he/she has provided relevant information and registered with the Tribunal.



### THE ADVANTAGES OF ELECTRONIC SYSTEM

- Workers, Trade Unions, and representatives of Employers do not have to leave work to attend the Tribunal for formal and pre-hearing matters.

- The formal process takes lesser time and exchange of documents can be done any time.
- Pleadings are greatly facilitated and the scope to narrow down issues right from the start is greater.
- Communication of minutes of proceedings is facilitated (paperless) thus enabling the fixing of continuation cases within short periods.
- The Tribunal can meet strict deadline imparted to it by law to deliver Awards and Orders.

Judge: Remember all your answers must be oral.  
Where do you work?

Witness: Oral

Judge: Who is your employer?

Witness: Oral



## HOW TO GET INTO THE E-TRIBUNAL SYSTEM?

- The system has been devised with the main objective that it must be user friendly.
- At the same time, strict parameters in relation to security of information exchanged by e-mail have to be respected.
- The pre-registration system has been adopted to ensure that the identity of any particular user can be ascertained.
- Once a registration form (available on <http://ert.gov.mu>) has been submitted, the user will receive notification that his/her application has been received and he/she will be able to make use of the system.
- A detailed user guide for the e-tribunal is available on the website of the Tribunal.

